THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No. 17369 of 2006

Date 05-09-2006

Between:

M/s.Saptagiri Bar & Restaurant.

..... PETITIONER

AND

The Commissioner of Prohibition & Excise, Hyderabad and others.

.....RESPONDENTS

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION No.17369 of 2006

O R D E R:

This writ petition is filed seeking a Writ of Mandamus directing the respondents 2 and 3 to grant licence to the petitioner for running Bar & Restaurant pursuant to the order of the first respondent dated 07-08-2006.

It is stated that the petitioner submitted an application on 21-06-2006 to the respondents herein for grant of a licence in form-2B for running bar under the provisions of the Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of licence) Rules, 2005 (for short 'the Rules') for the Excise year 2006-07.

As a matter of fact, the petitioner was running a Bar even during the previous years at premises bearing Dr.No.28/1663, Venkateswarapuram, Nellore having obtained the licence under the statutory rules.

For the Excise year 2006-07, the petitioner while seeking a licence, proposed to run the business in the same premises bearing Dr.No.28/1663, Venkateswarapuram, Nellore. In pursuance thereof, the third respondent-Prohibition & Excise Superintendent, Nellore, having conducted necessary enquiries submitted a report dated 18-07-2006 to the second respondent-Deputy Commissioner of Prohibition & Excise, Nellore informing that having regard to an objection petition filed by the local M.L.A. complaining that the proposed bar and restaurant is situated within a distance of 80 meters from

Sri Venkateswara Swamy temple, a Polytechnic college and a High School, the distance between the temple and the proposed bar and restaurant was measured and it was found that it was located at a distance of 96 meters from the temple. So far as the Polytechnic College and School are concerned, they are located more than 100 meters away from the proposed bar and restaurant. However, on the basis of the representation made by the writ petitioner, the Station House Officer, Nellore and Assistant Prohibition and Excise, Superintendent, Nellore once again measured the distance from the main gate of the temple to the altered entrance of the bar premises and it was reported that the distance between the mid-point of the temple gate and bar premises when measured perpendicular in 'Z' shape, it is 101 meters and when measured diagonally on straight line, it is 81 meters.

In turn, the second respondent had submitted the said report to the first respondent on 31-07-2006. The first respondent having considered the entire material placed before him, granted prior clearance vide proceedings dated 07-08-2006, for grant of licence for running bar in favour of the petitioner. On the basis of the same, the petitioner made an application for grant of licence fulfilling the requirements prescribed under the statute together with the necessary fee of Rs.10,000/- on 08-08-2006. However, no further steps were taken by respondents 2 and 3 and the licence as sought by the petitioner was not granted. Hence this writ petition was filed on 21-08-2006 with the above prayer.

The contention of the petitioner is that since the first respondent having considered the entire material placed before him, particularly, the report of the second respondent dated 31-07-2006, in which, it was stated that the distance between the temple and the

proposed bar when measured perpendicular in 'Z' shape is 101 meters thought it fit to grant prior clearance, there is absolutely no justifiable reason to withhold the petitioner's application for grant of licence even after fulfilling all the statutory requirements. It is contended that the order dated 07-08-2006 passed by the first respondent granting prior clearance is binding and respondents 2 and 3 cannot act contrary to the same. It is also contended that since the petitioner has been running the bar and restaurant in the same premises from the year 2001 onwards, the objection raised by the local M.L.A. who is inimical to the petitioner's family is untenable and cannot be made a ground to withhold the licence to the petitioner.

Though no counter affidavit is filed by the respondents, the learned Government Pleader for Prohibition and Excise contended that prior clearance dated 07-08-2006 granted by the first respondent does not confer any right on the petitioner for grant of licence.

The learned Government Pleader has also placed before this Court the entire record relating to the matter.

Respondents 5 to 7, who claim to be the residents of the locality, having got themselves impleaded, filed a counter stating that since the report of the second respondent-Deputy Commissioner of Prohibition and Excise shows that the distance between the proposed bar and the temple is less than 100 meters, the licence cannot be granted in favour of the petitioner.

At the outset, it is to be noted that under Rule 6 of the Rules, licence in Form-2B cannot be granted if the bar premises is within 100 meters from Educational Institution recognized by the Government, places for public worship such as Temples registered

by the Endowments Department, Mosques registered with the Wakf Board, Churches and Hospitals. So far as the bars within the limits of Municipal Corporations and within the belt area of five kilometers of the periphery of Municipal Corporations, the distance restriction was prescribed as 50 meters. However, a Division bench of this Court, in W.P.No.13301 of 2006 and batch, ordered that even in respect of the bars situated within the limits of Municipal Corporations and within the belt area of five kilometers of the periphery of the Municipal Corporations, the distance of 100 meters shall be maintained. Accordingly, the Commissioner issued proceedings directing all the licensing authorities to follow the distance of 100 meters even in respect of the bars situated in Municipal Corporations. In the circumstances, there can be no dispute that the petitioner is required to maintain a distance of 100 meters between the places of public worship and etc., if any situated in the locality and the premises bearing Dr.No.28/1663, Venkateswarapuram, Nellore where he proposes to run a bar. It is also relevant to note that the procedure for measuring the distance for the purpose of the prohibition prescribed under Rule 6 of the Rules is specifically explained in Rule 6 itself. Rule 6 to the said extent may be extracted hereunder:

> **6. Restriction on the grant of Licence**:- (1) A Licence form-2B shall not be granted.
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> (i) xxxxxx
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> (ii) Within 100 meters from educational Institution recognized by the Government, places for public worship such as Temples registered by the Endowments Department, Mosques registered with the Wakf Board, Churches and Hospitals.
>
> Provided that in the limits of Municipal Corporations and within the belt area of 5 Kms

of the periphery of Municipal Corporations, the distance restriction mentioned above shall be 50 meters.

(iii) xxxxxxxx

(iv) xxxxxxxx

(v) xxxxxxxx

(vi) xxxxxxxx

Explanation:- For the purpose of this rule.

a. "Place of public worship" means a temple registered with the Endowment Department, Mosque registered with Wakf Board and Church and includes such other religious institutions, as the State Government may by order specify in this behalf;

b. "Educational Institutions" means any Primary School, Middle School and High School recognized by the State Government or Central Government, Junior College or any College affiliated to any University established by law:

c. "High way" means National High way or State Highway and shall not include the part of the National Highway or State Highway which passes within the limits of Municipal Corporation, Municipal Council or the Gouthan in any village or Panchayat area.

d. "Hospital" means any hospital which is managed or owned by a local authority, State Government or Central Government or any private hospital having a provision of at least thirty (30) beds.

The distance referred above shall be measured from the mid-point of the entrance of the proposed Bar premises along with the nearest path by which pedestrian ordinarily reaches to the mid-point of the nearest gate of the institution or a place of public worship, if there is a compound wall and if there is no compound wall to the mid-point of the nearest entrance of the Institution/place of public worship or to the entrance of the first house of the predominantly residential area.

In the case on hand, it is not in dispute that the distance was once measured by the Sub-Divisional Prohibition & Excise Officer,

Nellore. The said report shows that the distance between the mid-point of the temple main gate when measured perpendicular to the National Highway is 102.70 meters. However, when measured diagonally, the distance was found to be 74.9 meters. The distance was once again measured on a request made by the petitioner by the Assistant Prohibition and Excise, Superintendent, Nellore and Station House Officer, Nellore jointly. The said report shows that the distance between the mid-point of the temple main gate and bar premises when measured perpendicular in 'Z' shape is 101 meters and when measured diagonally on straight line, it is 81 meters. The same was conveyed by the second respondent-Deputy Commissioner of Prohibition & Excise Superintendent, Nellore to the first respondent vide letter dated 31-07-2006.

It is true that certain objections raised by the local M.L.A. were also taken into consideration while measuring the distance. However, that itself would not vitiate the findings of fact recorded by the competent authorities on actual measurement of the distance.

It is also brought to my notice that the second respondent-Deputy commissioner of Prohibition and Excise, Nellore had addressed a letter dated 25-08-2006 to the first respondent bringing to his notice that as per the report of the third respondent-Prohibition and Excise Superintendent, Nellore, the pedestrians ordinarily reach the mid-point of the main gate of the temple and if the distance is measured from the said point diagonally, it would come to 81 meters and therefore, the proposed bar is not in accordance with the instructions communicated by the Commissioner dated 01-07-2006 and, therefore, the proposals were returned to the third respondent-Prohibition and Excise Superintendent, Nellore. As the proposed bar attracts Rule 6(1)(ii) of the Rules, a request was also

made to reject the prior clearance granted earlier. It is stated that the first respondent is yet to pass final orders.

From the material on record, it is clear that the distance between the proposed bar premises and the temple has been measured in accordance with the procedure prescribed under Rule 6 of the Rules and on the basis of the same, the competent authority is yet to take a decision.

Since admittedly, the prior clearance granted on 07-08-2006 does not confer any right on the petitioner for grant of licence, a Writ of Mandamus as prayed for cannot be granted. It is always open to the third respondent-licensing authority to take his own decision on the basis of the material available on record. Since it is clear from the record that the proposals for withdrawing the prior clearance are also pending before the first respondent, I deem it appropriate to dispose of the writ petition with a direction to the respondents to take appropriate decision, in accordance with law, and communicate the same to the petitioner.

The Writ Petition is accordingly disposed of. No order as to costs.

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05-09-2006

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